Supreme Court of the United States

OCTOBER TERM, 1939

No. 201

BUCKSTAFF BATH HOUSE COMPANY,.....*Petitioner,*

vs.

ED I. MCKINLEY, as Commissioner of the Department of Labor of the State of Arkansas, et al.,.....*Respondent.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR PETITIONER

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CENTRAL PRINTING CO., LITTLE ROCK

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OPINION OF THE SUPREME COURT OF ARKANSAS

The opinion of the Supreme Court of Arkansas has not appeared in the bound volumes of the reports of that Court or in the Southwestern Reporter. It will be found in Arkansas Law Reporter, Vol. 70, No. 1, p. 1, delivered April 10, 1939.

GROUNDS ON WHICH JURISDICTION IS INVOKED

The grounds on which the jurisdiction of this Court is invoked have been set out in the statement as to jurisdiction, heretofore filed by appellant in compliance with Sec-

tion 1 of Rule 12, namely, that the Supreme Court of Arkansas erred in holding that Act No. 155 of the General Assembly of Arkansas for the year 1937 applied to the operation of appellant, which operations were confined solely to the Hot Springs National Park Reservation, in that jurisdiction over the area had been ceded to the United States by the State of Arkansas under Act No. 30 of the General Assembly of 1903, and accepted by Act of Congress of April 20, 1904, which opinion it was claimed was in error in holding that the State of Arkansas reserved the right to tax the use of personal property within the Reservation; that the Act of Congress of March 3, 1891, in extending the right to tax personal property used on the Reservation, impliedly extended the right to tax its use, and that the State of Arkansas was not prohibited by Acts of Congress of March 3, 1891, and of April 20, 1904, from levying and collecting the tax on the privilege of employment within the Reservation area; and in holding that the State of Arkansas was not limited to taxation of personal property under the agreement entered into between the United States of America and the State of Arkansas respecting jurisdiction, as reflected by said Acts (R. 24-26), which decision it was claimed was in violation of statutes of the United States and repugnant to the laws of the United States.

STATEMENT OF THE CASE

Act No. 155 of the General Assembly of the State of Arkansas levied on all employers in the State of Arkansas a contribution of 1.8% of the wages paid employees during the calendar year of 1937, to create a fund for unemployment compensation. Appellant paid its unemployment contribution for that period to the Collector of Internal Revenue of the United States under Title IX, par. 901, of the Act of Congress of August 14, 1935 (49 Stat. 639). The State of Arkansas, acting through Ed I. McKinley, as Commissioner of the Department of Labor of the State of Arkansas, attempted to collect this assessment, and appellant applied to the Pulaski Chancery Court on petition to restrain its collection, alleging that the State of Arkansas had surrendered jurisdiction of the area in which the services were performed, reserving only the right to tax the personal property of individuals situated in the area (R. 1),

to which petition a general demurrer was filed, and the Chancery Court dismissed the petition, without opinion, for want of equity (R. 10).

Petitioner appealed to the Supreme Court of Arkansas, which is the highest State Court, and there on the 10th day of April, 1939, the order of the Pulaski Chancery Court was affirmed (R. 11). Within the time allowed by law a petition for rehearing was filed and by order of the court denied on the 23rd day of May, 1939 (R. 21), the judgment at that time becoming final. Application was made to the Honorable Griffin Smith, Chief Justice of the Supreme Court of Arkansas, for an appeal to this Court, which was granted, and on the 9th day of October, 1935, the appeal was dismissed for want of jurisdiction. Treating the appeal as a petition for writ of *certiorari*, in accordance with Section 237(c), Judicial Code, as amended, *certiorari* was granted. (R. 28.)

SPECIFICATION OF ASSIGNED ERRORS TO BE URGED

Petitioner's assignment of errors was incorporated with its petition for appeal to this Court and prayer for reversal. The errors assigned appear on pages 24 to 26 of the Record. The four assignments are interrelated and bear directly upon the question as to whether or not petitioner's employment of persons confined solely to the Hot Springs National Park Reservation could be taxed under Act No. 155 of the General Assembly of Arkansas for the year 1937. In view of the fact that jurisdiction of that area had been ceded to the United States by Act No. 30 of the General Assembly of Arkansas for the year 1903, reserving only the right to tax all structures and other property in private ownership on the Hot Springs Reservation accorded the State by Act of Congress approved March 3, 1891 (26 Stat. 844), which Act of March 3, 1891, extended to the State the right to tax "under the authority of the laws of the State of Arkansas applicable to equal taxation of personal property in that State, as personal property, of all structures and other property in private ownership on the Hot Springs Reservation," which cession was accepted by Act of Congress of April 20, 1904, c. 14, par. 1 33 Stat. 187,

embracing by reference the provisions of the Act of March 3, 1891, *supra*, relative to taxation.

Our argument will be based upon all of the assignments of errors, and they are as follows:

The Supreme Court of Arkansas erred in holding and deciding:

I.

That Act No. 30 of the General Assembly of Arkansas for the year 1903 reserved to the State of Arkansas the right to tax the use of personal property within the Hot Springs National Park Reservation.

II.

That the Act of Congress of March 3, 1891, c. 533, par. 5, 26 Stat. 844, and the Act of Congress of April 20, 1904, 33 Stat. 187, 16 USCA, pars. 372-383, by extending to the State of Arkansas the right to tax as personal property all structures and other property in private ownership in the Hot Springs National Park Reservation, impliedly extended the right to tax the use of such personal property.

III.

That the State of Arkansas was not prohibited by Act of Congress of March 3, 1891, and Act of Congress of April 20, 1904, from levying and collecting a tax on the privilege of employment on the Hot Springs National Park Reservation.

IV.

That by the agreement entered into between the United States of America and the State of Arkansas respecting jurisdiction of the area embraced in the Hot Springs National Park as reflected by Acts of Congress of April 20, 1832, c. 70, 4 Stat. at L. 505; Dec. 16, 1878, c. 5, 20 Stat. 258; March 3, 1891, and April 20, 1904, and Act No. 30 of the General Assembly of the State of Arkansas for 1903, the State of Arkansas was not limited to taxation as personal property, of structures and personal property in said area.

SUMMARY OF POINTS AND AUTHORITIES

I.

The Social Security Act of Arkansas (Act No. 155 of 1937) is an excise tax on the relation of employment, and in no sense a property tax.

Charles C. Steward Machine Co. v. *Davis*, 301 U. S. 548.

II.

A State is prohibited from levying an excise, occupation or privilege tax on activities conducted beyond its borders or jurisdiction.

Wachovia Bk. & Tr. Co. v. *Daughton*, 272 U. S. 567.

James v. *Dravo Contracting Co.*, 302 U. S. 134.

III.

The area embraced in the Hot Springs National Park Reservation is not a part of the State of Arkansas and is completely beyond its jurisdiction, with the sole exception of the right to tax as personal property the buildings and structures thereon and the personal property of individuals situated in the area.

Arlington Hotel Co. v. *Fant*, 278 U. S. 439.

Collins v. *Yosemite Park & Currie Co.*, 304 U. S. 517.

Ft. Leavenworth R. Co. v. *Lowe*, 114 U. S. 525.

Hot Springs Cases—Rector v. *U. S.*, 92 U. S. 698.

James v. *Dravo Contracting Co.*, 302 U. S. 134.

Williams v. *Arlington Hotel Co.*, 22 F. (2d) 669.

Yellowstone Nat. Park Transportation Co. v. *Gallatin County*, 31 F. (2d) 644.

Ex Parte Gaines, 56 Ark. 227.

IV.

The construction to be placed on acts of cession and acceptance of lands acquired by the United States within the geographical limits of a State, is the same as applied to an ordinary contract between individuals, with a strict construction against neither.

Collins v. *Yosemite Park & Currie Co.*, 304 U. S. 517.

James v. *Dravo Contracting Co.*, 302 U. S. 134.

Davies v. *Hot Springs*, 141 Ark. 521.

Merchants Transfer & Whse. Co. v. *Gates*, 180 Ark. 97.

ARGUMENT

It is undisputed that petitioner's sole operation and only place of business is located on the Hot Springs National Park Reservation and that all employment is limited to services performed in its bath house situated on the Reservation, and the sole question to be determined in this case is whether or not the State of Arkansas has jurisdiction to assess and collect a tax or contribution on that employment. It is further undisputed and admitted by the demurrer that a tax or contribution for this employment for the year 1937 was paid to the Collector of Internal Revenue under Title IX, par. 901, of the Act of Congress of August 14, 1935, 49 Stat. 639, relating to unemployment compensation.

I.

The Social Security Act of Arkansas (Act No. 155 of 1937) is an excise tax on the relation of employment and not a property tax.

This Court has held, in the case of *Charles C. Steward Machine Co.* v. *Davis*, 301 U. S. 548, at page 578, in defining the nature of the tax or contribution, that it is not a property tax but in the nature of an excise, duty or impost, giving the following definition:

> "The tax which is described in the statute as an excise, is laid with uniformity throughout the United

States as a duty, an impost or an excise, *on the relation of employment.*"

The Supreme Court of Arkansas, in its opinion in this case (R. 16), said:

> "The tax laid by Act 155 is not a tax on personal property nor is it in any sense a property tax."

and since no contention is made that it is a property tax, examination of the reciprocal acts of Congress and of the Legislature of the State of Arkansas must be made to determine the authority or lack of authority for its imposition.

II.

The state is prohibited from levying an excise, occupation or privilege tax on activities conducted beyond its borders or jurisdiction.

We believe that it will not be contended that this proposition of law is universal in its application and that the statement is supported by this Court's ruling in the case of *James* v. *Dravo Contracting Co.*, 302 U. S. 134.

III.

The area embraced in the Hot Springs National Park Reservation is not a part of the State of Arkansas and is completely beyond its jurisdiction, reserving to the state only limited taxing power.

A brief history of the lands in question might be helpful in arriving at the intent of the contracting parties as expressed by the reciprocal acts, most of which history is contained in the Hot Springs Cases of *Rector, and others*, v. *U. S.*, reported in 92 U. S. 698. These cases were on appeal from decisions of the Court of Claims under the provisions of an Act of Congress of May 31, 1870, 16 Stat. at L. 149, wherein the appellants were seeking to establish title to lands in the area of the Hot Springs Reservation, which included the particular land under discussion.

All of the State of Arkansas was included in the Louisiana Purchase in the year 1803, of which the Court takes judicial notice, and was the property of the United States,

both as proprietor and sovereign, until Arkansas was admitted to the Union as a State in 1836. The waters were known to have curative powers, and were commented upon as being remarkable in a message to Congress by Thomas Jefferson in 1806, in which message this locality was described, and which is noted in the opinion of Mr. Chief Justice Taft in the case of *Arlington Hotel Co.* v. *Fant*, 278 U. S. 439. As early as 1810 these springs were frequented by invalids, at which time the area was claimed by the Quapaw Indians. It was ceded to the United States under a treaty with the Quapaw Indians in 1818, but a public survey was not made until 1838, two years after the admission of Arkansas to the Union.

By Act of Congress of April 20, 1832, 4 Stat. at L. 505, par. 3, the hot springs, together with four sections of land, with the springs as nearly in the center as possible, were reserved to the future disposal of the United States, providing that the lands should not be entered, located or appropriated for any purpose whatever. No reservation, however, was made of the jurisdiction over the area when Arkansas was admitted in 1836, and whether the omission to make the reservation was by reason of oversight or intent, it follows that the State of Arkansas acquired sovereign jurisdiction subject only to the proprietary interest of the United States in the ownership of the fee. Nevertheless, the United States apparently claimed jurisdiction as sovereign as distinguished from proprietary interest in the area, as reflected by the Acts of Congress of December 16, 1878, c. 5, 20 Stat. 258, and March 3, 1891, c. 533, par. 5, 22 Stat. 844, which latter Act in extending taxation privileges is inconsistent with the mere proprietary interest. The State of Arkansas, as late as 1903, at the time of the passage of Act No. 30 of the General Assembly of the State, acquiesced in this apparent claim of sovereign jurisdiction over the land in question in that by the passage of the Act the Legislature referred to the right to tax which had been extended by the Act of Congress of 1891. There was, therefore, a jurisdictional controversy which the United States and the State of Arkansas attempted to adjust by these reciprocal acts.

The dispute over jurisdiction, even though the United States was not a party, resulted in the necessity for a decision by the Supreme Court of Arkansas in the case of *Ex Parte Gaines*, 56 Ark. 227, in 1892, and as a result of this decision it is evident that the cession Act (Act No. 30) of Arkansas was enacted in 1903. The case of *Ex Parte Gaines* arose over the levy of a tax against the leasehold interest of a lessee in lands embraced within the particular description of Act No. 30 of Arkansas for 1903, in which case the Supreme Court of Arkansas held that whatever interest the United States, as proprietor, had parted with was subject to taxation.

In accordance with the cases beginning with *Ft. Leavenworth Ry. Co.* v. *Lowe*, 114 U. S. 525, and ending with *Collins* v. *Yosemite Park & Currie Co.*, 304 U. S. 517, which will hereafter be discussed, the Supreme Court of Arkansas was correct in its decision. The Court, however, as reflected by its opinion at page 231, apparently was mistaken in the provisions of the Act of Congress of 1891 referred to, for regardless of whether or not Congress had the authority to grant the right to tax, the Act did not purport to extend to the State the right to tax the *leasehold interest*, but it in effect severed the building from the freehold and converted it to personal property.

If the United States had sovereign jurisdiction over the area, which was the subject of the legislation, this specific grant would necessarily have excluded the leasehold interest, and evidently that was exactly what Congress intended to do in the light of its Acts of April 20, 1832, and December 16, 1878, referred to in the foregoing assignments of errors.

In accordance with the ruling in *Ft. Leavenworth R. Co.* v. *Lowe, supra*, the interest of the United States in the lands in question was that of a proprietor until the passage of Act No. 30 of the State of Arkansas by the General Assembly in 1903. The lands in the Ft. Leavenworth area, which later became a part of the State of Kansas, likewise were a part of the Louisiana Purchase, and Kansas, like Arkansas, was admitted to the Union without specific reservation of sovereign jurisdiction of the area. At a later date

the State of Kansas ceded jurisdiction, reserving the right to tax "railroad, bridge and other corporations."

In resisting the tax imposed on the appellant in the Ft. Leavenworth case, it was contended that the reservation of the right to tax was invalid in that it infringed on the rights which the United States acquired along with lands secured under the provision of Article I, Section 8, of the Constitution of the United States. This Court held, at page 539 of the opinion, that the reservation of the right to tax was valid, "it not being a case where exclusive legislative authority is vested by the Constitution of the United States, that cession could be accompanied with such conditions as the State might see fit to annex, not inconsistent with the free and effective use of the fort as a military post." At page 541, this Court said:

> "The State and general government may deal with each other in any way they may deem best to carry out the purposes of the Constitution."

and,

> "As instrumentalities for the execution of the powers of the general government they are, as already said, exempt from such control of the States as would defeat or impair their use for these purposes; and if to their more effective use, a cession of legislative authority and political jurisdiction by the State would be desirable, we do not perceive any objection to its grant by the Legislature of the State."

This suggestion by the Court was at a later date put into effect by the Legislature of the State of Kansas.

If, therefore, the State of Arkansas prior to the Cession Act had the right to tax any property of any individual, leasehold or otherwise, the grant to the State of the right to tax "under the authority of the laws of the State of Arkansas applicable to the equal taxation of personal property in private ownership on the Hot Springs Reservation," was a vain and meaningless act. The justification for it can be found solely in the claim of the United States to sovereign jurisdiction. But, mistaken or otherwise, this was the very thing about which the parties were contracting, and at the

time of the passage of the Act by the General Assembly of the State of Arkansas, this State operated under its Constitution of 1874, which is set forth in Vol. I, p. 1, of Pope's Digest of the Statutes of Arkansas.

Article XVI, par. 5, provides:

> "All property subject to taxation shall be taxed according to its value (a), that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State (b). No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value (c), provided the General Assembly shall have power from time to time to tax hawkers, peddlers (d), ferries, exhibitions and privileges (e), in such manner as may be deemed proper. * * *"

This provision of equality of taxation applies only to real and personal property and was the thing referred to in the Act of Congress of March 3, 1891, in its efforts to grant limited taxing power to the State of Arkansas.

There were two classifications of subjects for taxation under the Constitution of Arkansas at the time of the passage of the Acts of Congress of March 3, 1891, and April 20, 1904, and the Cession Act of Arkansas of 1903, one being real and personal property; the other, hawkers, peddlers, ferries, exhibitions and privileges.

It was required that the tax levied against real and personal property be equal and uniform; there was no provision for equality or uniformity in the taxation of hawkers, peddlers, ferries, exhibitions and privileges. These Acts of cession and acceptance have used the particular words of the Constitution of Arkansas applicable only to the taxation of real and personal property, thereby limiting taxation in the Hot Springs Park Reservation to that classification of taxation. The existence of the right to tax privileges, which includes the use of property, was known to each of the parties to the compact, the United States and the State of Arkansas, as expressed by the reciprocal Acts, and if the right to tax a use had been intended, one of the Acts would

have embraced it. Without applying any rule of strict construction, it is evident that by the specific mention of one classification the other, that is, the use tax, was excluded.

The Supreme Court of Arkansas, in the case of *Davies* v. *Hot Springs*, 141 Ark. 521, in which case it was claimed that a privilege or occupation tax had been assessed discriminatorily and without equal application to all occupations was void, said (p. 526):

> "It is claimed, however, that the statute provides an unjust and discriminatory method of classification which renders it void. In consideration of that question, it must be remembered that the provision of the Constitution *with respect to uniformity in taxation* applies only to a property tax, and has no reference to the taxation of privileges. * * *"

The Cession Act of Arkansas, after granting exclusive jurisdiction over the area in question, contained the customary reservation of the right of execution of process, either civil or criminal, and the specific provision of the reservation of the "right to tax all structures and other property in private ownership * * * accorded to the State by the Act of Congress approved March 3, 1901," the date of 1901 being either an error of the printer of the official Acts or an oversight of the drafter of the Bill, since the Act referred to is that of 1891.

The cession of these lands was accepted by the United States under Act of Congress of April 20, 1904, 33 Stat. 187, specifically embodying by reference and implication the provisions of the Act of March 3, 1891. These Acts of Congress and the provisions of the Constitution of the State of Arkansas are set forth in the Appendix to this brief.

Reading the Act of Congress, the Act of the Legislature, and the provisions of the Constitution of Arkansas of 1874 together, to determine the intent of the parties, which rule of construction is axiomatic, we feel that the reservation of the right to tax extended only to personal property and the building severed from the freehold and arbitrarily invested with the character of personal property,

all other jurisdiction and all other taxing power passing to the United States under the Cession Act.

If this be the correct interpretation of the wording of the contracts expressed by the Acts in the light of the attendant circumstances and the intentions and contentions of the parties, it only remains to determine whether or not the United States and the State of Arkansas had the power to enter the contract.

The case of *Ft. Leavenworth R. Co.* v. *Lowe, supra,* it was held that the United States could accept restricted jurisdiction of lands for public use such as this under consideration.

In the case of *Williams* v. *Arlington Hotel Co.*; 22 F. (2d) 669, decided by the Circuit Court of Appeals on October 17, 1927, sovereignty over the particular lands in question was in issue. The Arlington Hotel was located on the Reservation, and it was destroyed by fire. Baggage belonging to appellant was destroyed in that fire, and an action was instituted for its value. The liability of an innkeeper as that liability existed in Arkansas prior to cession of the area in 1903, was that of an insurer. Subsequent to 1903, the Legislature of the State of Arkansas reduced the innkeeper's liability to that which would be the result of negligence. The United States District Court held that the latter measure of liability applied, which decision was reversed on the appeal. The Court held that the liability of the innkeeper was that existing prior to cession of the area, regardless of whether or not the particular portion of the land was being put to governmental use, and that the jurisdiction depended on construction of the Acts of cession and acceptance. Mr. Justice Field, at page 670 of the opinion, said:

> "If the land is not acquired under the above constitutional provision" (Art. I, par. 8) "the State may cede such jurisdiction as it sees fit to the Government, and that the extent of the jurisdiction of the Government depends on the terms of such cession."

In the case of *Arlington Hotel Co.* v. *Fant*, 278 U. S. 439, decided by this Court on February 18, 1929, the same question was involved as in the Williams case, *supra.* Quot-

ing with approval from the case of *Ft. Leavenworth R. Co.* v. *Lowe,* at page 451 it was said:

> "But the Court further held that when a formal cession was made by the State to the United States * * * the State and the Government of the United States could frame the cession and acceptance of governmental jurisdiction so as to divide the jurisdiction between the two as the two parties might determine, provided only they save enough jurisdiction for the United States to enable it to carry out the purposes of the acquisition of jurisdiction."

This Court held that over the area in question, which is the same as that involved in this appeal, the jurisdiction of the United States was supreme and exclusive with the exception of the reservation of the right to tax in the Cession Act of Arkansas of 1903. The decision of the Court was that liability existed for the destruction of the baggage by fire under the provisions of the innkeeper's liability existing before cession by the State of Arkansas in 1903.

In the case of *Yellowstone Park Transportation Co.* v. *Gallatin County,* 31 F. (2d) 644, the area had been ceded to the United States, reserving only the right of service of process, etc., in which the Court said (p. 645):

> "In other words, after the date of cession the ceded territory was as much without the jurisdiction of the State making the cession as was any other foreign territory, except insofar as jurisdiction was expressly reserved."

In the case of *Collins* v. *Yosemite Park & Currie Co.,* 304 U. S. 517, the State of California in the enforcement of its "Alcoholic Beverage Control Act" attempted to collect a tax on the sale of liquor within the Yosemite Park area, and to impose a license for its sale by the Park Company in that area.

The jurisdiction of the United States over the lands in question and the reservation of the taxing power arose under circumstances similar to the present case. The lands were acquired in 1848 by the United States from Mexico and a proprietary interest only was reserved on the admis-

sion of California to the Union in 1850. It was ceded to the United States in 1891. The valley was re-ceded to the United States in 1905 and accepted by Congress in 1906.

California however reserved, in addition to the service of process, etc., the right to tax "persons and corporations, their franchises and property," which reservation was held to apply to the sales tax but not to the regulatory feature of license under the California Alcoholic Beverage Control Act. It will be noted that the reservation by its own terms is much broader than the reservation in the cession of the lands in question by the State of Arkansas. But this case settled the question of whether or not the United States could accept by cession from a State jurisdiction less than exclusive, which question had been raised in the case of *Arlington Hotel Co.* v. *Fant, supra,* but not decided, and which was assumed in the case of *Yellowstone Park Transportation Co.* v. *Gallatin County, supra.* It is now, therefore, determined that such qualified jurisdiction can be accepted under the provisions of clause (17), paragraph 8, Article I, of the Constitution of the United States, and the only inquiry is directed to the meaning of the Acts of cession and acceptance constituting the compact between the State and the United States. In that opinion at page 528 the method of interpretation is indicated in this statement:

> "Whatever the existing status of jurisdiction at the time of their enactment, the Acts of cession and acceptance of 1919 and 1920 are to be taken as declarations of the agreements reached by the respective sovereignties, State and Nation, as to the future jurisdiction and rights of each in the entire area of Yosemite National Park. * * * The States of the Union and the national Government may make mutually satisfactory arrangements as to jurisdiction of territory within their borders and thus in a most effective way, cooperatively adjust problems flowing from our dual system of government. Jurisdiction obtained by consent or cession may be qualified by agreement or through offer and acceptance or ratification. It is a matter of arrangement. These arrangements the Court will recognize and respect."

We contend that under the authority of these cases the jurisdiction of the right to tax any of the petitioner's operations is vested exclusively in the United States with the exception of that of the State of Arkansas to tax personal property on the Reservation and buildings as personal property.

IV.

The construction to be placed on acts of cession and acceptance of lands acquired by the United States within the geographical limits of a state is the same as applied to an ordinary contract between individuals, with a strict construction against neither.

In support of our contention that the construction to be placed on Acts of cession and acceptance of land acquired by the United States within the geographical limits of the State, is that construction applied to ordinary contracts between individuals, with a strict construction against neither, and that the Courts of the United States have adopted such a rule of construction, with which the decision in the instant case is in conflict, we rely on the cases of *James* v. *Dravo Contracting Co.*, 302 U. S. 134, and *Collins* v. *Yosemite Park & Currie Co.*, 304 U. S. 517.

In the case of *James* v. *Dravo Contracting Co., supra,* the United States had acquired lands on the banks of the Kanawha River in the State of West Virginia, to be used in connection with the construction of locks and dams in the bed of that river, which was navigable. These lands were acquired under authority of an Act of the Legislature of the State of West Virginia granting permission for their acquisition and reserving concurrent jurisdiction to the State not inconsistent with the Federal purposes.

The Co[illegible]acting Company, in the erection of the locks and dams, fa[illegible]ricated a part of the material at its main plant in Pennsylvania. A part of the remaining work was done on the lands acquired by the United States under the terms of the State statutes. The State of West Virginia levied an occupation or privilege tax against the operations of the contractor based on the gross receipts for the construction work. This Court held that the tax was not collectible on

that portion of the work done in the Pennsylvania plant of the Company, but that, construing all of the Acts of the Legislature of the State of West Virginia on the subject of acquisition of lands by the United States, as a whole, the concurrent jurisdiction retained for taxation by the State was not in conflict with or a burden on the Federal purposes, and that the tax was collectible on that portion of the operations.

With reference to construction we quote from the opinion at page 142:

> "Clause 17 governs those cases where the United States acquires land with the consent of the Legislature of the State for the purposes there described. If lands are otherwise acquired, and jurisdiction is ceded by the State to the United States, the terms of the cession to the extent that they may lawfully be prescribed, that is, consistently with the carrying out of the purpose of the acquisition, determine the extent of the Federal jurisdiction."

The facts and citations from the case of *Collins* v. *Yosemite Park & Currie Co., supra,* are set out above.

CONCLUSION

The construction which the Supreme Court of Arkansas has placed on Act No. 30 of the General Assembly of Arkansas of 1903 and the Acts of Congress of March 3, 1891, and April 20, 1904, completely nullifies the effect of each and is in conflict, at least in spirit, with the interpretation placed on the acts by the United States courts in the cases of *Arlington Hotel Co.* v. *Fant,* and *Williams* v. *Arlington Hotel Co., supra,* in that it was the State which reserved limited jurisdiction, and not that the United States acquired only limited jurisdiction of the area. The decision of the Supreme Court of Arkansas nullifies the effect of the aforesaid Acts in this respect, that it fails to recognize that a change in the legal status of the right to tax in the area existed after the Cession Act of Arkansas of 1903.

After the admission of Arkansas to the Union, without reservation of jurisdiction of these lands, the State's right to tax any property or any interest in property of individuals on the Reservation cannot be questioned. This, of course, is with the exception of property which might be in governmental use and which under the particular facts might constitute an interference with governmental activities, the validity of which tax under the circumstances would be determined by another line of decisions of this Court. The case of *Ex parte Gaines, supra*, announced this principle of law. Subsequent to the decision in the Gaines case, the Act of cession of Arkansas of 1903 was passed. It necessarily intended to change the existing situation with reference to taxation in the area. It is a rule of construction of statutes in this State that the Legislature is presumed in the passage of an act to have in mind prior decisions of the courts on the subject in ascertaining its meaning.

In the case of *Merchants Transfer & Whse. Co.* v. *Gates*, 180 Ark. 97, at page 102 that Court said:

> "It is a fundamental rule of construction that the Legislature is presumed to have enacted a statute in the light of all judicial decisions relating to the same subject."

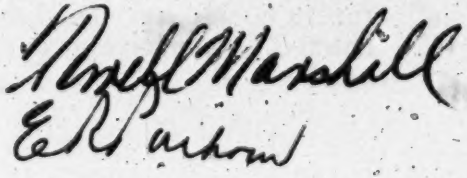
If, therefore, under the decision in the Gaines case the State of Arkansas had the supreme right of taxation of individuals on the Reservation, of necessity the Legislature must have intended to surrender that supreme right and to limit the taxation to that which the United States intended to be conferred by the Act of Congress of March 3, 1891. Any other construction of the Act would amount to only a legislative sanction of a judicial decision of its Court. It is consistent with reason that United States, having acquired jurisdiction and control over the area in question for a particular purpose, used the words in the Act of 1891 in the sense that they were used in the Constitution of the State of Arkansas, for while property taxes might not interfere with the use to which the lands were put, taxation of privileges and uses might seriously interfere with the governmental operation, which was solely making use of the waters for the general public good.

The decision in the present case, in upholding the use or excise tax, in effect changes the wording of the Act of Congress of March 3, 1891, to an extention of the right to tax persons and corporations, their franchises and property, for we can conceive of no limitation of the taxing power of the State under this decision. It places the taxing power of the State exactly as it existed prior to the Cession Act of Arkansas of 1903, and the acceptance Act of Congress of April 20, 1904.

We have examined the Social Security Act of Congress of August 14, 1935 (49 Stat. 620) to the best of our ability, and we are unable to find any cession to the States of a right to tax employment within the National Park areas or other United States Reservations under State Social Security Acts which it was contemplated would be passed. This may have been the result of an oversight in the drafting of that Act, but it nevertheless exists. It may have been purposely omitted because there was no compulsory provision for a State within the boundaries of which the Reservation might have been located to pass a State Social Security Act. We feel that the omission was due to an oversight in drafting that Act, because since its passage in 1935 Congress, by amendment, has extended to the States the right to levy a social security tax in this and other National Park areas and Reservations, effective 1940. This, at least, indicates that the United States, one of the parties to the compact, did not think that the right to levy the assessment existed prior to the passage of this amendment on August 10, 1939. (Internal Rev. Code Sec. 1606.)

We respectfully contend that the decision in the present case should be reversed.

TERRELL MARSHALL,
E. R. PARHAM,
Counsel for Petitioner.



APPENDIX

Act No. 30 of the General Assembly of the State of Arkansas, approved February 21, 1903:

"SECTION 1. That exclusive jurisdiction over that part of the Hot Springs Reservation known and described as part of the Hot Springs mountain and whose limits are particularly described by the following boundary lines * * * all in Township 2 South, Range 19 West, in the County of Garland, State of Arkansas, being part of the permanent United States Hot Springs Reservation, is hereby ceded and granted to the United States of America, to be exercised so long as the same shall remain the property of the United States; provided, that this grant of jurisdiction shall not prevent the execution of any process of the State, civil or criminal, on any person who may be on such reservation or premises; provided, further, that the right to tax all structures and other property in private ownership on the Hot Springs Reservation accorded the State by the Act of Congress approved March 3, 1901" (1891) "is hereby reserved to the State of Arkansas."

Constitution of Arkansas (1874), Art. XVI, par. 5:

"All property subject to taxation shall be taxed according to its value (a), that value to be ascertained in such manner as the General Assembly shall direct, making the same equal and uniform throughout the State (b). No one species of property from which a tax may be collected shall be taxed higher than another species of property of equal value (c), provided the General Assembly shall have power from time to time to tax hawkers, peddlers (d), ferries, exhibitions and privileges (e), in such manner as may be deemed proper."

Act of Congress, April 20, 1832, 4 Stat. at L. 505, par. 3:

"The hot springs in said territory, together with four sections of land, including said springs, as near the center thereof as may be, shall be reserved to the future disposal of the United States and shall not be entered, located or appropriated for any purpose whatever."

Act of Congress, December 16, 1878, c. 5, 20 Stat. 258:

"Provided, that all titles given or to be given by the United States shall explicitly exclude the right to the purchaser of the land, his heirs or assigns, from forever boring thereon for hot water; and the hot springs, with the reservation and mountain, are hereby dedicated to the United States and shall remain forever free from sale or alienation."

Act of Congress, March 3, 1891, c. 533, par. 5, 26 Stat. 844:

"The consent of the United States is hereby given for the taxation under the authority of the laws of the State of Arkansas applicable to the equal taxation of personal property in that State, as personal property, of all structures and other property in private ownership on the Hot Springs Reservation."

Act of Congress, April 20, 1904, c. 1400, par. 1, 33 Stat. 187:

"The portion of the Hot Springs mountain reservation in the State of Arkansas situated and lying within boundaries defined as follows * * * all in Township 2 South, Range 19 West, in the County of Garland and State of Arkansas, being a part of the permanent United States Hot Springs Reservation, sole and exclusive jurisdiction over which was ceded to the United States by an act of the General Assembly of the State of Arkansas * * *, which cession is hereby accepted * * * shall be under the sole and exclusive jurisdiction of the United States * * *. Provided that nothing in this act shall be so construed as to forbid the service within said boundary of any civil or criminal process of any court having jurisdiction in the State of Arkansas * * * And provided, further, that this act shall not be so construed as to interfere with the right to tax all structures and other property in private ownership within the boundaries above described accorded to the State of Arkansas by section 5 of the Act of Congress approved March 3, 1891, entitled 'An Act to Regulate the Granting of Leases at Hot Springs, Arkansas, and for Other Purposes'."